

109TH CONGRESS  
2D SESSION

# S. 3117

To establish a program to provide more protection at lower cost through a national backstop for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, to better assist in the financial recovery from such catastrophes, and to develop a rigorous process of continuous improvement.

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2006

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To establish a program to provide more protection at lower cost through a national backstop for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, to better assist in the financial recovery from such catastrophes, and to develop a rigorous process of continuous improvement.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Homeowners Protection Act of 2006”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. National Commission on Catastrophe Preparation and Protection.
- Sec. 4. Program authority.
- Sec. 5. Qualified lines of coverage.
- Sec. 6. Covered perils.
- Sec. 7. Contracts for reinsurance coverage for eligible State programs.
- Sec. 8. Minimum level of retained losses and maximum Federal liability.
- Sec. 9. Consumer Hurricane, Earthquake, Loss Protection (HELP) Fund.
- Sec. 10. Regulations.
- Sec. 11. Termination.
- Sec. 12. Annual study concerning benefits of the Act.
- Sec. 13. GAO study of the National Flood Insurance Program and hurricane-related flooding.
- Sec. 14. Definitions.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

- 8 (1) America needs to take steps to be better  
9 prepared for and better protected from catastrophes;
- 10 (2) the hurricane seasons of 2004 and 2005 are  
11 startling reminders of both the human and economic  
12 devastation that hurricanes, flooding, and other nat-  
13 ural disasters can cause;
- 14 (3) if a repeat of the deadly 1900 Galveston  
15 hurricane occurred again it could cause thousands of  
16 deaths and over \$36,000,000,000 in loss;
- 17 (4) if the 1906 San Francisco earthquake oc-  
18 curred again it could cause thousands of deaths, dis-

1 place millions of residents, destroy thousands of  
2 businesses, and cause over \$400,000,000,000 in loss;

3 (5) if a Category 5 hurricane were to hit Miami  
4 it could cause thousands of deaths and over  
5 \$50,000,000,000 in loss and devastate the local and  
6 national economy;

7 (6) if a repeat of the 1938 “Long Island Ex-  
8 press” were to occur again it could cause thousands  
9 of deaths and over \$30,000,000,000 in damage, and  
10 if a hurricane that strong were to directly hit Man-  
11 hattan it could cause over \$150,000,000,000 in  
12 damage and cause irreparable harm to our Nation’s  
13 economy;

14 (7) a more comprehensive and integrated ap-  
15 proach to dealing with catastrophes is needed;

16 (8) using history as a guide, natural catas-  
17 trophes will inevitably place a tremendous strain on  
18 homeowners’ insurance markets in many areas, will  
19 raise costs for consumers, and will jeopardize the  
20 ability of many consumers to adequately insure their  
21 homes and possessions;

22 (9) the lack of sufficient insurance capacity and  
23 the inability of private insurers to build enough cap-  
24 ital, in a short amount of time, threatens to increase  
25 the number of uninsured homeowners, which, in

1       turn, increases the risk of mortgage defaults and the  
2       strain on the Nation's banking system;

3           (10) some States have exercised leadership  
4       through reasonable action to ensure the continued  
5       availability and affordability of homeowners' insurance  
6       for all residents;

7           (11) it is appropriate that efforts to improve insurance  
8       availability be designed and implemented at  
9       the State level;

10          (12) while State insurance programs may be  
11       adequate to cover losses from most natural disasters,  
12       a small percentage of events is likely to exceed the  
13       financial capacity of these programs and the local  
14       insurance markets;

15          (13) a limited national insurance backstop will  
16       improve the effectiveness of State insurance programs  
17       and private insurance markets and will increase the likelihood  
18       that homeowners' insurance claims will be fully paid in the event  
19       of a large natural catastrophe and that routine claims that occur  
20       after a mega-catastrophe will also continue to be  
21       paid;  
22       paid;

23          (14) it is necessary to provide a national insurance  
24       backstop program that will provide more pro-

1       tection at an overall lower cost and that will promote  
2       stability in the homeowners' insurance market;

3           (15) it is the proper role of the Federal Govern-  
4       ment to prepare for and protect its citizens from ca-  
5       tastrophes and to facilitate consumer protection, vic-  
6       tim assistance, and recovery, including financial re-  
7       covery; and

8           (16) any Federal reinsurance program must be  
9       founded upon sound actuarial principles and priced  
10      in a manner that encourages the creation of State  
11      funds and maximizes the buying potential of these  
12      State funds and encourages and promotes prevention  
13      and mitigation, recovery and rebuilding, and con-  
14      sumer education, and emphasizes continuous anal-  
15      ysis and improvement.

16 **SEC. 3. NATIONAL COMMISSION ON CATASTROPHE PREPA-**  
17 **RATION AND PROTECTION.**

18       (a) ESTABLISHMENT.—The Secretary of the Treas-  
19      ury shall establish a commission to be known as the Na-  
20      tional Commission on Catastrophe Preparation and Pro-  
21      tection.

22       (b) DUTIES.—The Commission shall meet for the  
23      purpose of advising the Secretary regarding the estimated  
24      loss costs associated with the contracts for reinsurance

1 coverage available under this Act and carrying out the  
 2 functions specified in this Act, including—

3 (1) the development and implementation of  
 4 public education concerning the risks posed by nat-  
 5 ural catastrophes;

6 (2) the development and implementation of pre-  
 7 vention, mitigation, recovery, and rebuilding stand-  
 8 ards that better prepare and protect the United  
 9 States from catastrophes; and

10 (3) conducting continuous analysis of the effec-  
 11 tiveness of this Act and recommending improve-  
 12 ments to the Congress so that—

13 (A) the costs of providing catastrophe pro-  
 14 tection are decreased; and

15 (B) the United States is better prepared.

16 (c) MEMBERS.—

17 (1) APPOINTMENT AND QUALIFICATION.—The  
 18 Commission shall consist of 9 members, as follows:

19 (A) HOMELAND SECURITY MEMBER.—The  
 20 Secretary of Homeland Security or the Sec-  
 21 retary's designee.

22 (B) APPOINTED MEMBERS.—8 members  
 23 appointed by the Secretary, who shall consist  
 24 of—

25 (i) 1 individual who is an actuary;

1 (ii) 1 individual who is employed in  
2 engineering;

3 (iii) 1 individual representing the sci-  
4 entific community;

5 (iv) 1 individual representing property  
6 and casualty insurers;

7 (v) 1 individual representing rein-  
8 surers;

9 (vi) 1 individual who is a member or  
10 former member of the National Association  
11 of Insurance Commissioners; and

12 (vii) 2 individuals who are consumers.

13 (2) PREVENTION OF CONFLICTS OF INTER-  
14 EST.—Members shall have no personal or financial  
15 interest at stake in the deliberations of the Commis-  
16 sion.

17 (d) TREATMENT OF NON-FEDERAL MEMBERS.—  
18 Each member of the Commission who is not otherwise em-  
19 ployed by the Federal Government shall be considered a  
20 special Government employee for purposes of sections 202  
21 and 208 of title 18, United States Code.

22 (e) EXPERTS AND CONSULTANTS.—

23 (1) IN GENERAL.—The Commission may pro-  
24 cure temporary and intermittent services from indi-  
25 viduals or groups recognized as experts in the fields

1 of meteorology, seismology, vulcanology, geology,  
2 structural engineering, wind engineering, and hy-  
3 drology, and other fields, under section 3109(b) of  
4 title 5, United States Code, but at a rate not in ex-  
5 cess of the daily equivalent of the annual rate of  
6 basic pay payable for level V of the Executive Sched-  
7 ule, for each day during which the individual pro-  
8 cured is performing such services for the Commis-  
9 sion.

10 (2) OTHER EXPERTS.—The Commission may  
11 also procure, and the Congress encourages the Com-  
12 mission to procure, experts from universities, re-  
13 search centers, foundations, and other appropriate  
14 organizations who could study, research, and develop  
15 methods and mechanisms that could be utilized to  
16 strengthen structures to better withstand the perils  
17 covered by this Act.

18 (f) COMPENSATION.—

19 (1) IN GENERAL.—Each member of the Com-  
20 mission who is not an officer or employee of the  
21 Federal Government shall be compensated at a rate  
22 of basic pay payable for level V of the Executive  
23 Schedule, for each day (including travel time) during  
24 which such member is engaged in the performance  
25 of the duties of the Commission.



1           (2) FEDERAL EMPLOYEES.—All members of the  
2       Commission who are officers or employees of the  
3       United States shall serve without compensation in  
4       addition to that received for their services as officers  
5       or employees of the United States.

6       (g) OBTAINING DATA.—

7           (1) IN GENERAL.—The Commission and the  
8       Secretary may solicit loss exposure data and such  
9       other information as either the Commission or the  
10      Secretary deems necessary to carry out its respon-  
11      sibilities from governmental agencies and bodies and  
12      organizations that act as statistical agents for the  
13      insurance industry.

14          (2) OBLIGATION TO KEEP CONFIDENTIAL.—  
15      The Commission and the Secretary shall take such  
16      actions as are necessary to ensure that information  
17      that either deems confidential or proprietary is dis-  
18      closed only to authorized individuals working for the  
19      Commission or the Secretary.

20          (3) FAILURE TO COMPLY.—No State insurance  
21      or reinsurance program may participate if any gov-  
22      ernmental agency within that State has refused to  
23      provide information requested by the Commission or  
24      the Secretary.

25      (h) FUNDING.—

1           (1) AUTHORIZATION OF APPROPRIATIONS.—

2       There is authorized to be appropriated—

3           (A) \$10,000,000 for fiscal year 2007 for

4       the—

5           (i) initial expenses in establishing the

6       Commission; and

7           (ii) initial activities of the Commission

8       that cannot timely be covered by amounts

9       obtained pursuant to section

10       7(b)(6)(B)(iii), as determined by the Sec-

11       retary;

12       (B) such additional sums as may be nec-

13       essary to carry out subsequent activities of the

14       Commission;

15       (C) \$10,000,000 for fiscal year 2007 for

16       the initial expenses of the Secretary in carrying

17       out the program authorized under section 4;

18       and

19       (D) such additional sums as may be nec-

20       essary to carry out subsequent activities of the

21       Secretary under this Act.

22       (2) OFFSET.—

23       (A) OBTAINED FROM PURCHASERS.—The

24       Secretary shall provide, to the maximum extent

25       practicable, that an amount equal to any

1 amount appropriated under paragraph (1) is  
2 obtained from purchasers of reinsurance cov-  
3 erage under this Act and deposited in the Fund  
4 established under section 9.

5 (B) INCLUSION IN PRICING CONTRACTS.—

6 Any offset obtained under subparagraph (A)  
7 shall be obtained by inclusion of a provision for  
8 the Secretary's and the Commission's expenses  
9 incorporated into the pricing of the contracts  
10 for such reinsurance coverage, pursuant to sec-  
11 tion 7(b)(6)(B)(iii).

12 (i) TERMINATION.—The Commission shall terminate  
13 upon the effective date of the repeal under section 11(c).

14 **SEC. 4. PROGRAM AUTHORITY.**

15 (a) IN GENERAL.—The Secretary, in consultation  
16 with the Secretary of Homeland Security, shall carry out  
17 a program under this Act to make homeowners protection  
18 coverage available through contracts for reinsurance cov-  
19 erage under section 7, which shall be made available for  
20 purchase only by eligible State programs.

21 (b) PURPOSE.—The program shall be designed to  
22 make reinsurance coverage under this Act available—

23 (1) to improve the availability and affordability  
24 of homeowners' insurance for the purpose of facili-

1       tating the pooling, and spreading the risk, of cata-  
2       strophic financial losses from natural catastrophes;

3           (2) to improve the solvency and capacity of  
4       homeowners' insurance markets;

5           (3) to encourage the development and imple-  
6       mentation of mitigation, prevention, recovery, and  
7       rebuilding standards; and

8           (4) to recommend methods to continuously im-  
9       prove the way the United States reacts and responds  
10      to catastrophes, including improvements to the  
11      HELP Fund established under section 9.

12      (c) CONTRACT PRINCIPLES.—Under the program es-  
13     tablished under this Act, the Secretary shall offer reinsur-  
14     ance coverage through contracts with covered purchasers,  
15     which contracts shall—

16           (1) minimize the administrative costs of the  
17      Federal Government; and

18           (2) provide coverage based solely on insured  
19      losses within a State for the eligible State program  
20      purchasing the contract.

21     **SEC. 5. QUALIFIED LINES OF COVERAGE.**

22       Each contract for reinsurance coverage made avail-  
23     able under this Act shall provide insurance coverage  
24     against residential property losses to—

1           (1) homes (including dwellings owned under  
2       condominium and cooperative ownership arrange-  
3       ments); and

4           (2) the contents of apartment buildings.

5   **SEC. 6. COVERED PERILS.**

6       (a) IN GENERAL.—Each contract for reinsurance  
7       coverage made available under this Act shall cover losses  
8       insured or reinsured by an eligible State program pur-  
9       chasing the contract that are proximately caused by—

10           (1) earthquakes;

11           (2) perils ensuing from earthquakes, including  
12       fire and tsunamis;

13           (3) tropical cyclones having maximum sustained  
14       winds of at least 74 miles per hour, including hurri-  
15       canes and typhoons;

16           (4) tornadoes;

17           (5) volcanic eruptions;

18           (6) catastrophic winter storms; and

19           (7) any other natural catastrophe peril (not in-  
20       cluding any flood) insured or reinsured under the el-  
21       igible State program for which reinsurance coverage  
22       under section 7 is provided.

23       (b) RULEMAKING.—The Secretary shall, by regula-  
24       tion, define the natural catastrophe perils described in  
25       subsection (a)(7).

1 **SEC. 7. CONTRACTS FOR REINSURANCE COVERAGE FOR**  
 2 **ELIGIBLE STATE PROGRAMS.**

3 (a) **ELIGIBLE STATE PROGRAMS.**—A program shall  
 4 be eligible to purchase a contract under this section for  
 5 reinsurance coverage under this Act only if the State enti-  
 6 ty authorized to make such determinations certifies to the  
 7 Secretary that the program complies with the following re-  
 8 quirements:

9 (1) **PROGRAM DESIGN.**—The program shall be a  
 10 State-operated—

11 (A) insurance program that—

12 (i) offers coverage for—

13 (I) homes (which may include  
 14 dwellings owned under condominium  
 15 and cooperative ownership arrange-  
 16 ments); and

17 (II) the contents of apartments  
 18 to State residents; and

19 (ii) is authorized by State law; or

20 (B) reinsurance program that is designed  
 21 to improve private insurance markets that offer  
 22 coverage for—

23 (i) homes (which may include dwell-  
 24 ings owned under condominium and coop-  
 25 erative ownership arrangements); and

26 (ii) the contents of apartments.

1 (2) OPERATION.—

2 (A) IN GENERAL.—The program shall  
3 meet the following requirements:

4 (i) A majority of the members of the  
5 governing body of the program shall be  
6 public officials.

7 (ii) The State shall have a financial  
8 interest in the program, which shall not in-  
9 clude a program authorized by State law  
10 or regulation that requires insurers to pool  
11 resources to provide property insurance  
12 coverage for covered perils.

13 (iii) The State shall not be eligible for  
14 Consumer HELP Fund assistance under  
15 section 9 if a State has appropriated  
16 money from the State fund and not paid it  
17 back to the State fund, with interest.

18 (iv) Upon receipt of assistance from  
19 the Consumer HELP Fund, each reim-  
20 bursement contract sold by a State shall  
21 provide for reimbursements at 100 percent  
22 of eligible losses.

23 (v) A State shall be required to utilize  
24 either—

1 (I) an open rating system that  
 2 permits insurers to set homeowners'  
 3 insurance rates without prior approval  
 4 of the State; or

5 (II) a rate approval process that  
 6 requires actuarially sound, risk-based,  
 7 self-sufficient homeowners' insurance  
 8 rates.

9 (B) CERTIFICATION.—A State shall not be  
 10 eligible for Consumer HELP Fund assistance  
 11 unless the Secretary can certify that such State  
 12 is in compliance with the requirement described  
 13 in clause (v).

14 (3) TAX STATUS.—The program shall be struc-  
 15 tured and carried out in a manner so that the pro-  
 16 gram is exempt from all Federal taxation.

17 (4) COVERAGE.—The program shall cover perils  
 18 enumerated in section 6.

19 (5) EARNINGS.—The program may not provide  
 20 for, nor shall have ever made, any redistribution of  
 21 any part of any net profits of the program to any  
 22 insurer that participates in the program.

23 (6) PREVENTION AND MITIGATION.—

24 (A) IN GENERAL.—The program shall in-  
 25 clude prevention and mitigation provisions that



1           require that not less \$10,000,000 and not more  
2           than 35 percent of the net investment income  
3           of the State insurance or reinsurance program  
4           be used for programs to mitigate losses from  
5           natural catastrophes for which the State insur-  
6           ance or reinsurance program was established.

7           (B) RULE OF CONSTRUCTION.—For pur-  
8           poses of this paragraph, prevention and mitiga-  
9           tion shall include methods to reduce losses of  
10          life and property, including appropriate meas-  
11          ures to adequately reflect—

12               (i) encouragement of awareness about  
13               the risk factors and what can be done to  
14               eliminate or reduce them;

15               (ii) location of the risk, by giving  
16               careful consideration of the natural risks  
17               for the location of the property before al-  
18               lowing building and considerations if struc-  
19               tures are allowed; and

20               (iii) construction relative to the risk  
21               and hazards, which act upon—

22                       (I) State mandated building  
23                       codes appropriate for the risk;

24                       (II) adequate enforcement of the  
25                       risk-appropriate building codes;

1 (III) building materials that pre-  
 2 vent or significantly lessen potential  
 3 damage from the natural catas-  
 4 trophes;

5 (IV) building methods that pre-  
 6 vent or significantly lessen potential  
 7 damage from the natural catas-  
 8 trophes; and

9 (V) a focus on prevention and  
 10 mitigation for any substantially dam-  
 11 aged structure, with an emphasis on  
 12 how structures can be retrofitted so as  
 13 to make them building code compli-  
 14 ant.

15 (7) REQUIREMENTS REGARDING COVERAGE.—

16 (A) IN GENERAL.—The program—

17 (i) may not, except for charges or as-  
 18 sessments related to post-event financing  
 19 or bonding, involve cross-subsidization be-  
 20 tween any separate property and casualty  
 21 lines covered under the program unless the  
 22 elimination of such activity in an existing  
 23 program would negatively impact the eligi-  
 24 bility of the program to purchase a con-

1           tract for reinsurance coverage under this  
2           Act pursuant to paragraph (3);

3           (ii) shall include provisions that au-  
4           thorize the State insurance commissioner  
5           or other State entity authorized to make  
6           such a determination to terminate the pro-  
7           gram if the insurance commissioner or  
8           other such entity determines that the pro-  
9           gram is no longer necessary to ensure the  
10          availability of homeowners' insurance for  
11          all residents of the State; and

12          (iii) shall provide that, for any insur-  
13          ance coverage for homes (which may in-  
14          clude dwellings owned under condominium  
15          and cooperative ownership arrangements)  
16          and the contents of apartments that is  
17          made available under the State insurance  
18          program and for any reinsurance coverage  
19          for such insurance coverage made available  
20          under the State reinsurance program, the  
21          premium rates charged shall be amounts  
22          that, at a minimum, are sufficient to cover  
23          the full actuarial costs of such coverage,  
24          based on consideration of the risks involved  
25          and accepted actuarial and rate making

1 principles, anticipated administrative ex-  
2 penses, and loss and loss-adjustment ex-  
3 penses.

4 (B) APPLICABILITY.—This paragraph shall  
5 apply—

6 (i) before the expiration of the 2-year  
7 period beginning on the date of the enact-  
8 ment of this Act, only to State programs  
9 which, after January 1, 2007, commence  
10 offering insurance or reinsurance coverage  
11 described in subparagraph (A) or (B), re-  
12 spectively, of paragraph (1); and

13 (ii) after the expiration of such period,  
14 to all State programs.

15 (8) OTHER QUALIFICATIONS.—

16 (A) REGULATIONS.—

17 (i) COMPLIANCE.—The State program  
18 shall (for the year for which the coverage  
19 is in effect) comply with regulations that  
20 shall be issued under this paragraph by the  
21 Secretary, in consultation with the Na-  
22 tional Commission on Catastrophe Prepa-  
23 ration and Protection established under  
24 section 3.

1                   (ii) CRITERIA.—The regulations  
2                   issued under clause (i) shall establish cri-  
3                   teria for State programs to qualify to pur-  
4                   chase reinsurance under this section, which  
5                   are in addition to the requirements under  
6                   the other paragraphs of this subsection.

7                   (B) CONTENTS.—The regulations issued  
8                   under subparagraph (A)(i) shall include re-  
9                   quirements that—

10                   (i) the State program shall have pub-  
11                   lic members on its board of directors or  
12                   have an advisory board with public mem-  
13                   bers;

14                   (ii) the State program provide ade-  
15                   quate insurance or reinsurance protection,  
16                   as applicable, for the peril covered, which  
17                   shall include a range of deductibles and  
18                   premium costs that reflect the applicable  
19                   risk to eligible properties;

20                   (iii) insurance or reinsurance cov-  
21                   erage, as applicable, provided by the State  
22                   program is made available on a non-  
23                   discriminatory basis to all qualifying resi-  
24                   dents;

1           (iv) any new construction, substantial  
2           rehabilitation, and renovation insured or  
3           reinsured by the program complies with  
4           applicable State or local government build-  
5           ing, fire, and safety codes;

6           (v) the State, or appropriate local gov-  
7           ernments within the State, have in effect  
8           and enforce nationally recognized model  
9           building, fire, and safety codes and con-  
10          sensus-based standards that offer risk re-  
11          sponsive resistance that is substantially  
12          equivalent or greater than the resistance to  
13          earthquakes or high winds;

14          (vi) the State has taken actions to es-  
15          tablish an insurance rate structure that  
16          takes into account measures to mitigate in-  
17          surance losses;

18          (vii) there are in effect, in such State,  
19          laws or regulations sufficient to prohibit  
20          price gouging, during the term of reinsur-  
21          ance coverage under this Act for the State  
22          program in any disaster area located with-  
23          in the State; and

24          (viii) the State program complies with  
25          such other requirements that the Secretary

1                   considers necessary to carry out the pur-  
2                   poses of this Act.

3           (b) TERMS OF CONTRACTS.—Each contract under  
4 this section for reinsurance coverage under this Act shall  
5 be subject to the following terms and conditions:

6           (1) MATURITY.—The term of the contract shall  
7 not exceed 1 year or such longer term as the Sec-  
8 retary may determine.

9           (2) PAYMENT CONDITION.—The contract shall  
10 authorize claims payments for eligible losses only to  
11 the eligible State program purchasing the coverage.

12          (3) RETAINED LOSSES REQUIREMENT.—For  
13 each event of a covered peril, the contract shall  
14 make a payment for the event only if the total  
15 amount of insurance claims for losses, which are  
16 covered by qualified lines, occur to properties located  
17 within the State covered by the contract, and that  
18 result from events, exceeds the amount of retained  
19 losses provided under the contract (pursuant to sec-  
20 tion 8(a)) purchased by the eligible State program.

21          (4) MULTIPLE EVENTS.—The contract shall—  
22               (A) cover any eligible losses from 1 or  
23 more covered events that may occur during the  
24 term of the contract; and

1 (B) provide that if multiple events occur,  
 2 the retained losses requirement under para-  
 3 graph (3) shall apply on a calendar year basis,  
 4 in the aggregate and not separately to each in-  
 5 dividual event.

6 (5) TIMING OF ELIGIBLE LOSSES.—Eligible  
 7 losses under the contract shall include only insur-  
 8 ance claims for property covered by qualified lines  
 9 that are reported to the eligible State program with-  
 10 in the 3-year period beginning upon the event or  
 11 events for which payment under the contract is pro-  
 12 vided.

13 (6) PRICING.—

14 (A) DETERMINATION.—The price of rein-  
 15 surance coverage under the contract shall be an  
 16 amount established by the Secretary as follows:

17 (i) RECOMMENDATIONS.—The Sec-  
 18 retary shall take into consideration the rec-  
 19 ommendations of the Commission in estab-  
 20 lishing the price, but the price may not be  
 21 less than the amount recommended by the  
 22 Commission.

23 (ii) FAIRNESS TO TAXPAYERS.—The  
 24 price shall be established at a level that—



1 (I) is designed to reflect the risks  
2 and costs being borne under each re-  
3 insurance contract issued under this  
4 Act; and

5 (II) takes into consideration em-  
6 pirical models of natural disasters and  
7 the capacity of private markets to ab-  
8 sorb insured losses from natural dis-  
9 asters.

10 (iii) SELF-SUFFICIENCY.—The rates  
11 for reinsurance coverage shall be estab-  
12 lished at a level that annually produces ex-  
13 pected premiums that shall be sufficient to  
14 pay the expected annualized cost of all  
15 claims, loss adjustment expenses, and all  
16 administrative costs of reinsurance cov-  
17 erage offered under this section.

18 (B) COMPONENTS.—The price shall consist  
19 of the following components:

20 (i) RISK-BASED PRICE.—A risk-based  
21 price, which shall reflect the anticipated  
22 annualized payout of the contract accord-  
23 ing to the actuarial analysis and rec-  
24 ommendations of the Commission.

1                   (ii) ADMINISTRATIVE COSTS.—A sum  
2                   sufficient to provide for the operation of  
3                   the Commission and the administrative ex-  
4                   penses incurred by the Secretary in car-  
5                   rying out this Act.

6                   (7) INFORMATION.—The contract shall contain  
7                   a condition providing that the Commission may re-  
8                   quire a State program that is covered under the con-  
9                   tract to submit to the Commission all information on  
10                  the State program relevant to the duties of the Com-  
11                  mission, as determined by the Secretary.

12                 (8) ADDITIONAL CONTRACT OPTION.—

13                 (A) IN GENERAL.—The contract shall pro-  
14                 vide that the purchaser of the contract may,  
15                 during a term of such original contract, pur-  
16                 chase additional contracts from among those of-  
17                 fered by the Secretary at the beginning of the  
18                 term, subject to the limitations under section 8,  
19                 at the prices at which such contracts were of-  
20                 fered at the beginning of the term, prorated  
21                 based upon the remaining term as determined  
22                 by the Secretary.

23                 (B) TIMING.—An additional contract pur-  
24                 chased under subparagraph (A) shall provide  
25                 coverage beginning on a date 15 days after the

1           date of purchase but shall not provide coverage  
 2           for losses for an event that has already oc-  
 3           curred.

4           (9) OTHERS.—The contract shall contain such  
 5           other terms as the Secretary considers necessary—

6                   (A) to carry out this Act; and

7                   (B) to ensure the long-term financial integ-  
 8           rity of the program under this Act.

9           (c) PARTICIPATION BY MULTI-STATE CATASTROPHE  
 10       FUND PROGRAMS.—

11           (1) IN GENERAL.—Nothing in this Act shall  
 12       prohibit, and this Act shall be construed to facilitate  
 13       and encourage, the creation of multi-State catas-  
 14       trophe insurance or reinsurance programs, or the  
 15       participation by such programs in the program es-  
 16       tablished pursuant to section 4.

17           (2) REGULATIONS.—The Secretary shall, by  
 18       regulation, apply the provisions of this Act to multi-  
 19       State catastrophe insurance and reinsurance pro-  
 20       grams.

21       **SEC. 8. MINIMUM LEVEL OF RETAINED LOSSES AND MAX-**  
 22       **IMUM FEDERAL LIABILITY.**

23           (a) AVAILABLE LEVELS OF RETAINED LOSSES.—In  
 24       making reinsurance coverage available under this Act, the  
 25       Secretary shall make available for purchase contracts for

1 such coverage that require the sustainment of retained  
 2 losses from covered perils (as required under section  
 3 7(b)(3) for payment of eligible losses) in various amounts,  
 4 as the Secretary, in consultation with the Commission, de-  
 5 termines appropriate and subject to the requirements  
 6 under subsection (b).

7 (b) MINIMUM LEVEL OF RETAINED LOSSES.—

8 (1) CONTRACTS FOR STATE PROGRAMS.—Sub-  
 9 ject to paragraphs (3) and (4) and notwithstanding  
 10 any other provision of this Act, a contract for rein-  
 11 surance coverage under section 7 for an eligible  
 12 State program that offers insurance or reinsurance  
 13 coverage described in subparagraph (A) or (B), re-  
 14 spectively, of section 7(a)(1), may not be made avail-  
 15 able or sold unless the contract requires retained  
 16 losses from covered perils in the following amount:

17 (A) IN GENERAL.—The State program  
 18 shall sustain an amount of retained losses of  
 19 not less than—

20 (i) the claims-paying capacity of the  
 21 eligible State program, as determined by  
 22 the Secretary; and

23 (ii) an amount, determined by the  
 24 Secretary in consultation with the Commis-  
 25 sion, that is the amount equal to the eligi-

1           ble losses projected to be incurred at least  
2           once every 50 years on an annual basis  
3           from covered perils.

4           (B) TRANSITION RULE FOR EXISTING PRO-  
5           GRAMS.—

6                   (i) CLAIMS-PAYING CAPACITY.—Sub-  
7           ject to clause (ii), in the case of any eligi-  
8           ble State program that was offering insur-  
9           ance or reinsurance coverage on the date  
10          of the enactment of this Act and the  
11          claims-paying capacity of which is greater  
12          than the amount determined under sub-  
13          paragraph (A)(i) but less than an amount  
14          determined for the program under sub-  
15          paragraph (A)(ii), the minimum level of re-  
16          tained losses applicable under this para-  
17          graph shall be the claims-paying capacity  
18          of such State program.

19                   (ii) AGREEMENT.—

20                   (I) IN GENERAL.—Clause (i)  
21           shall apply to a State program only if  
22           the program enters into a written  
23           agreement with the Secretary pro-  
24           viding a schedule for increasing the  
25           claims-paying capacity of the program

1 to the amount determined for the pro-  
 2 gram under subparagraph (A)(ii) over  
 3 a period not to exceed 5 years.

4 (II) EXTENSION.—The Secretary  
 5 may extend the 5-year period under  
 6 subclause (I) for not more than 5 ad-  
 7 ditional 1-year periods if the Sec-  
 8 retary determines that losses incurred  
 9 by the State program as a result of  
 10 covered perils create excessive hard-  
 11 ship on the State program.

12 (III) CONSULTATION.—The Sec-  
 13 retary shall consult with the appro-  
 14 priate officials of the State program  
 15 regarding the required schedule and  
 16 any potential 1-year extensions.

17 (C) TRANSITION RULE FOR NEW PRO-  
 18 GRAMS.—

19 (i) 50-YEAR EVENT.—The Secretary  
 20 may provide that, in the case of an eligible  
 21 State program that, after January 1,  
 22 2007, commences offering insurance or re-  
 23 insurance coverage, during the 7-year pe-  
 24 riod beginning on the date that reinsur-  
 25 ance coverage under section 7 is first made

1 available, the minimum level of retained  
2 losses applicable under this paragraph  
3 shall be the amount determined for the  
4 State under subparagraph (A)(i), except  
5 that such minimum level shall be adjusted  
6 annually as provided in clause (ii) of this  
7 subparagraph.

8 (ii) ANNUAL ADJUSTMENT.—Each an-  
9 nual adjustment under this clause shall in-  
10 crease the minimum level of retained losses  
11 applicable under this subparagraph to an  
12 eligible State program described in clause  
13 (i) in a manner such that—

14 (I) during the course of such 7-  
15 year period, the applicable minimum  
16 level of retained losses approaches the  
17 minimum level that, under subpara-  
18 graph (A)(ii), will apply to the eligible  
19 State program upon the expiration of  
20 such period; and

21 (II) each such annual increase is  
22 a substantially similar amount, to the  
23 extent practicable.

24 (D) REDUCTION BECAUSE OF REDUCED  
25 CLAIMS-PAYING CAPACITY.—

1                   (i)     AUTHORITY.—Notwithstanding  
2                   subparagraphs (A), (B), and (C) or the  
3                   terms contained in a contract for reinsur-  
4                   ance pursuant to such subparagraphs, if  
5                   the Secretary determines that the claims-  
6                   paying capacity of an eligible State pro-  
7                   gram has been reduced because of payment  
8                   for losses due to an event, the Secretary  
9                   may reduce the minimum level of retained  
10                  losses.

11               (ii)    TERM OF REDUCTION.—

12                   (I)   EXTENSION.—The Secretary  
13                   may extend the 5-year period for not  
14                   more than 5 additional 1-year periods  
15                   if the Secretary determines that losses  
16                   incurred by the State program as a  
17                   result of covered perils create exces-  
18                   sive hardship on the State program.

19                   (II)   CONSULTATION.—The Sec-  
20                   retary shall consult with the appro-  
21                   priate officials of the State program  
22                   regarding the required schedule and  
23                   any potential 1-year extensions.

24                   (E)   CLAIMS-PAYING CAPACITY.—For pur-  
25                   poses of this paragraph, the claims-paying ca-



1           capacity of a State-operated insurance or reinsur-  
 2           ance program under section 7(a)(1) shall be de-  
 3           termined by the Secretary, in consultation with  
 4           the Commission, taking into consideration the  
 5           claims-paying capacity as determined by the  
 6           State program, retained losses to private insur-  
 7           ers in the State in an amount assigned by the  
 8           State insurance commissioner, the cash surplus  
 9           of the program, and the lines of credit, reinsur-  
 10          ance, and other financing mechanisms of the  
 11          program established by law.

12          (c) MAXIMUM FEDERAL LIABILITY.—

13           (1) IN GENERAL.—Notwithstanding any other  
 14          provision of law, the Secretary may sell only con-  
 15          tracts for reinsurance coverage under this Act in  
 16          various amounts that comply with the following re-  
 17          quirements:

18           (A) ESTIMATE OF AGGREGATE LIABIL-  
 19          ITY.—The aggregate liability for payment of  
 20          claims under all such contracts in any single  
 21          year is unlikely to exceed \$200,000,000,000 (as  
 22          such amount is adjusted under paragraph (2)).

23           (B) ELIGIBLE LOSS COVERAGE SOLD.—El-  
 24          igible losses covered by all contracts sold within  
 25          a State during a 12-month period do not exceed

1 the difference between the following amounts  
 2 (each of which shall be determined by the Sec-  
 3 retary in consultation with the Commission):

4 (i) The amount equal to the eligible  
 5 loss projected to be incurred once every  
 6 500 years from a single event in the State.

7 (ii) The amount equal to the eligible  
 8 loss projected to be incurred once every 50  
 9 years from a single event in the State.

10 (2) ANNUAL ADJUSTMENTS.—The Secretary  
 11 shall annually adjust the amount under paragraph  
 12 (1)(A) (as it may have been previously adjusted) to  
 13 provide for inflation in accordance with an inflation  
 14 index that the Secretary determines to be appro-  
 15 priate.

16 (d) LIMITATION ON PERCENTAGE OF RISK IN EX-  
 17 CESS OF RETAINED LOSSES.—

18 (1) IN GENERAL.—The Secretary may not  
 19 make available for purchase contracts for reinsur-  
 20 ance coverage under this Act that would pay out  
 21 more than 100 percent of eligible losses in excess of  
 22 retained losses in the case of a contract under sec-  
 23 tion 7 for an eligible State program, for such State.

24 (2) PAYOUT.—For purposes of this subsection,  
 25 the amount of payout from a reinsurance contract

1 shall be the amount of eligible losses in excess of re-  
 2 tained losses multiplied by the percentage under  
 3 paragraph (1).

4 **SEC. 9. CONSUMER HURRICANE, EARTHQUAKE, LOSS PRO-**  
 5 **TECTION (HELP) FUND.**

6 (a) ESTABLISHMENT.—There is established within  
 7 the Treasury of the United States a fund to be known  
 8 as the Consumer HELP Fund (in this section referred  
 9 to as the “Fund”).

10 (b) CREDITS.—The Fund shall be credited with—

11 (1) amounts received annually from the sale of  
 12 contracts for reinsurance coverage under this Act;

13 (2) any amounts borrowed under subsection  
 14 (d);

15 (3) any amounts earned on investments of the  
 16 Fund pursuant to subsection (e); and

17 (4) such other amounts as may be credited to  
 18 the Fund.

19 (c) USES.—Amounts in the Fund shall be available  
 20 to the Secretary only for the following purposes:

21 (1) CONTRACT PAYMENTS.—For payments to  
 22 covered purchasers under contracts for reinsurance  
 23 coverage for eligible losses under such contracts.

24 (2) COMMISSION COSTS.—To pay for the oper-  
 25 ating costs of the Commission.

1           (3) ADMINISTRATIVE EXPENSES.—To pay for  
 2           the administrative expenses incurred by the Sec-  
 3           retary in carrying out the reinsurance program  
 4           under this Act.

5           (4) TERMINATION.—Upon termination under  
 6           section 11, as provided in such section.

7           (d) BORROWING.—

8           (1) AUTHORITY.—To the extent that the  
 9           amounts in the Fund are insufficient to pay claims  
 10          and expenses under subsection (c), the Secretary—

11                  (A) may issue such obligations of the Fund  
 12                  as may be necessary to cover the insufficiency;  
 13                  and

14                  (B) shall purchase any such obligations  
 15                  issued.

16          (2) PUBLIC DEBT TRANSACTION.—For the pur-  
 17          pose of purchasing any such obligations under para-  
 18          graph (1)—

19                  (A) the Secretary may use as a public debt  
 20                  transaction the proceeds from the sale of any  
 21                  securities issued under chapter 31 of title 31,  
 22                  United States Code; and

23                  (B) the purposes for which such securities  
 24                  are issued under such chapter are hereby ex-

1           tended to include any purchase by the Secretary  
2           of such obligations under this subsection.

3           (3) CHARACTERISTICS OF OBLIGATIONS.—Obli-  
4           gations issued under this subsection shall be in such  
5           forms and denominations, bear such maturities, bear  
6           interest at such rate, and be subject to such other  
7           terms and conditions, as the Secretary shall deter-  
8           mine.

9           (4) TREATMENT.—All redemptions, purchases,  
10          and sales by the Secretary of obligations under this  
11          subsection shall be treated as public debt trans-  
12          actions of the United States.

13          (5) REPAYMENT.—Any obligations issued under  
14          this subsection shall be—

15                 (A) repaid including interest, from the  
16                 Fund; and

17                 (B) recouped from premiums charged for  
18                 reinsurance coverage provided under this Act.

19          (e) INVESTMENT.—If the Secretary determines that  
20          the amounts in the Fund are in excess of current needs,  
21          the Secretary may invest such amounts as the Secretary  
22          considers advisable in obligations issued or guaranteed by  
23          the United States.

24          (f) PROHIBITION OF FEDERAL FUNDS.—Except for  
25          amounts made available pursuant to subsection (d) and

1 section 3(h), no further Federal funds shall be authorized  
2 or appropriated for the Fund or for carrying out the rein-  
3 surance program under this Act.

4 **SEC. 10. REGULATIONS.**

5 The Secretary, in consultation with the Secretary of  
6 the Department of Homeland Security, shall issue any  
7 regulations necessary to carry out the program for rein-  
8 surance coverage under this Act.

9 **SEC. 11. TERMINATION.**

10 (a) IN GENERAL.—Except as provided in subsection  
11 (b), the Secretary may not provide any reinsurance cov-  
12 erage under this Act covering any period after the expira-  
13 tion of the 20-year period beginning on the date of the  
14 enactment of this Act.

15 (b) EXTENSION.—If upon the expiration of the period  
16 under subsection (a) the Secretary, in consultation with  
17 the Commission, determines that continuation of the pro-  
18 gram for reinsurance coverage under this Act is necessary  
19 or appropriate to carry out the purpose of this Act under  
20 section 4(b) because of insufficient growth of capacity in  
21 the private homeowners' insurance market, the Secretary  
22 shall continue to provide reinsurance coverage under this  
23 Act until the expiration of the 5-year period beginning  
24 upon the expiration of the period under subsection (a).

1 (c) REPEAL.—Effective upon the date that reinsur-  
 2 ance coverage under this Act is no longer available or in  
 3 force pursuant to subsection (a) or (b), this Act (except  
 4 for this section) is repealed.

5 (d) DEFICIT REDUCTION.—The Secretary shall cover  
 6 into the General Fund of the Treasury any amounts re-  
 7 maining in the Fund under section 9 upon the repeal of  
 8 this Act.

9 **SEC. 12. ANNUAL STUDY CONCERNING BENEFITS OF THE**  
 10 **ACT.**

11 (a) IN GENERAL.—The Secretary shall, on an annual  
 12 basis, conduct a study and submit to the Congress a report  
 13 that—

14 (1) analyzes the cost and availability of home-  
 15 owners' insurance for losses resulting from cata-  
 16 strophic natural disasters covered by the reinsurance  
 17 program under this Act;

18 (2) describes the efforts of the participating  
 19 States in—

20 (A) enacting preparedness, prevention,  
 21 mitigation, recovery, and rebuilding standards;  
 22 and

23 (B) educating the public on the risks asso-  
 24 ciated with natural catastrophe; and

1           (3) makes recommendations regarding ways to  
2       improve the program under this Act and its adminis-  
3       tration.

4       (b) CONTENTS.—Each annual study under this sec-  
5       tion shall also determine and identify, on an aggregate  
6       basis—

7           (1) for each State or region, the capacity of the  
8       private homeowners’ insurance market with respect  
9       to coverage for losses from catastrophic natural dis-  
10      asters;

11          (2) for each State or region, the percentage of  
12      homeowners who have such coverage, the catas-  
13      trophes covered, and the average cost of such cov-  
14      erage; and

15          (3) for each State or region, the effects this Act  
16      is having on the availability and affordability of such  
17      insurance.

18      (c) TIMING.—Each annual report under this section  
19      shall be submitted not later than March 30 of the year  
20      after the year for which the study was conducted.

21      (d) COMMENCEMENT OF REPORTING REQUIRE-  
22      MENT.—The Secretary shall first submit an annual report  
23      under this section not later than 2 years after the date  
24      of the enactment of this Act.



1 **SEC. 13. GAO STUDY OF THE NATIONAL FLOOD INSURANCE**  
2 **PROGRAM AND HURRICANE-RELATED**  
3 **FLOODING.**

4 (a) IN GENERAL.—In light of the flooding associated  
5 with Hurricane Katrina, the Comptroller General of the  
6 United States shall conduct a study of the availability and  
7 adequacy of flood insurance coverage for losses to resi-  
8 dences and other properties caused by hurricane-related  
9 flooding.

10 (b) CONTENTS.—The study under this section shall  
11 determine and analyze—

12 (1) the frequency and severity of hurricane-re-  
13 lated flooding during the last 20 years in comparison  
14 with flooding that is not hurricane-related;

15 (2) the differences between the risks of flood-re-  
16 lated losses to properties located within the 100-year  
17 floodplain and those located outside of such flood-  
18 plain;

19 (3) the extent to which insurance coverage re-  
20 ferred to in subsection (a) is available for properties  
21 not located within the 100-year floodplain;

22 (4) the advantages and disadvantages of mak-  
23 ing such coverage for such properties available under  
24 the national flood insurance program;

25 (5) appropriate methods for establishing pre-  
26 miums for insurance coverage under such program

1 for such properties that, based on accepted actuarial  
2 and rate making principles, cover the full costs of  
3 providing such coverage;

4 (6) appropriate eligibility criteria for making  
5 flood insurance coverage under such program avail-  
6 able for properties that are not located within the  
7 100-year floodplain or within a community partici-  
8 pating in the national flood insurance program;

9 (7) the appropriateness of the existing  
10 deductibles for all properties eligible for insurance  
11 coverage under the national flood insurance pro-  
12 gram, including the standard and variable  
13 deductibles for pre-FIRM and post-FIRM prop-  
14 erties, and whether a broader range of deductibles  
15 should be established;

16 (8) income levels of policyholders of insurance  
17 made available under the national flood insurance  
18 program whose properties are pre-FIRM subsidized  
19 properties;

20 (9) how the national flood program is marketed,  
21 if changes can be made so that more people are  
22 aware of flood coverage, and how take-up rates may  
23 be improved;

24 (10) the number of homes that are not primary  
25 residences that are insured under the national flood

1 insurance program and are pre-FIRM subsidized  
2 properties; and

3 (11) suggestions and means on how the pro-  
4 gram under this Act can better meet its stated goals  
5 as well as the feasibility of expanding the national  
6 flood insurance program to cover the perils covered  
7 by this Act.

8 (c) CONSULTATION WITH FEMA.—In conducting  
9 the study under this section, the Comptroller General shall  
10 consult with the Director of the Federal Emergency Man-  
11 agement Agency.

12 (d) REPORT.—The Comptroller General shall com-  
13 plete the study under this section and submit a report to  
14 the Congress regarding the findings of the study not later  
15 than 5 months after the date of the enactment of this Act.

16 **SEC. 14. DEFINITIONS.**

17 For purposes of this Act, the following definitions  
18 shall apply:

19 (1) COMMISSION.—The term “Commission”  
20 means the National Commission on Catastrophe  
21 Preparation and Protection established under section  
22 3.

23 (2) COVERED PERILS.—The term “covered per-  
24 ils” means the natural disaster perils under section  
25 6.

1           (3) COVERED PURCHASER.—The term “covered  
2           purchaser” means an eligible State-operated insur-  
3           ance or reinsurance program that purchases reinsur-  
4           ance coverage made available under a contract under  
5           section 7.

6           (4) DISASTER AREA.—The term “disaster area”  
7           means a geographical area, with respect to which—

8                   (A) a covered peril specified in section 6  
9                   has occurred; and

10                   (B) a declaration that a major disaster ex-  
11                   ists, as a result of the occurrence of such  
12                   peril—

13                           (i) has been made by the President of  
14                           the United States; and

15                           (ii) is in effect.

16           (5) ELIGIBLE LOSSES.—The term “eligible  
17           losses” means losses in excess of the sustained and  
18           retained losses, as defined by the Secretary after  
19           consultation with the Commission.

20           (6) ELIGIBLE STATE PROGRAM.—The term “eli-  
21           gible State program” means—

22                   (A) a State program that, pursuant to sec-  
23                   tion 7(a), is eligible to purchase reinsurance  
24                   coverage made available through contracts  
25                   under section 7; or

1 (B) a multi-State program that is eligible  
2 to purchase such coverage pursuant to section  
3 7(c).

4 (7) PRICE GOUGING.—The term “price  
5 gouging” means the providing of any consumer good  
6 or service by a supplier related to repair or restora-  
7 tion of property damaged from a catastrophe for a  
8 price that the supplier knows or has reason to know  
9 is greater, by at least the percentage set forth in a  
10 State law or regulation prohibiting such act (not-  
11 withstanding any real cost increase due to any at-  
12 tendant business risk and other reasonable expenses  
13 that result from the major catastrophe involved),  
14 than the price charged by the supplier for such con-  
15 sumer good or service immediately before the dis-  
16 aster.

17 (8) QUALIFIED LINES.—The term “qualified  
18 lines” means lines of insurance coverage for which  
19 losses are covered under section 5 by reinsurance  
20 coverage under this Act.

21 (9) REINSURANCE COVERAGE.—The term “re-  
22 insurance coverage under this Act” means coverage  
23 under contracts made available under section 7.

24 (10) SECRETARY.—The term “Secretary”  
25 means the Secretary of the Treasury.

1           (11) STATE.—The term “State” means the  
2       States of the United States, the District of Colum-  
3       bia, the Commonwealth of Puerto Rico, the Com-  
4       monwealth of the Northern Mariana Islands, Guam,  
5       the Virgin Islands, American Samoa, and any other  
6       territory or possession of the United States.

○